



WILLIAM CLAY
<clay_butch@bellsouth.net>

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To comments-southern-francismarion-sumter@fs.fed.us

cc

bcc

Subject Butch Clay Comments Pasted and Attached

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Chattooga Planning Team

USDA Forest Service

Francis Marion and Sumter National Forests

4391 Broad River Road

Columbia, South Carolina 29212

**Re: Re-Initiation of NEPA process aimed at permitting boating
on Upper Chattooga River and request for new public comments**

Thank you for the opportunity to comment.

I have tried to comply with the request for “new information” and not simply regurgitate information already submitted. However, this protracted and **costly** tax-payer-funded process—undertaken at the behest of the ka lobby—has assumed such a scope that I can not be certain that what I offer is new.

First, a point of clarification, by way of offering for consideration what is for me **new information** , information that has been critical in shaping my own **new perspective** — perspective gleaned from observing the consuming progress of this whole sad affair:

When the USFS issued a decision on this proposed action— Alternative 4—I was persuaded to adopt a compromise position that would allow limited boating on the North Fork only at certain times and flows. While I was never happy about the location of the proposed new paddling on the North Fork, I thought that the USFS did show wisdom in the temporal aspects of the proposed new paddling, in permitting kayaking only during a three month winter window.

The basis of my willingness to compromise was thus: Ecosystems operate not just in space but also, as well, in time. However much I did not like the spatial dimensions—the location—of the proposal to allow new paddling in some of the wildest, finest, most remote reaches of the North Fork, I did believe that I could live with the temporal aspects of the new paddling permitting—the short, three-month paddling season. I was prepared to view this position as a reasonable compromise position to allow a limited set of hardy boaters the chance to enjoy the same pristine wildness of the North Fork Wilderness that I so enjoy.

Many in the paddling community whose opinion I respect had in previous comment periods expressed the desire to “free float” in the wildest parts of the Chattooga basin, in order to see “wilderness.” How could I begrudge anyone the desire to travel through wilderness so fine and hard to get to as that of the upper North Fork, I reasoned, so long as those individuals were willing to negotiate the river wilderness on its own terms, as wilderness demands one do?

However, what has become clear by now with the continued agonizing, litigious agenda of the kayak lobby—is there is a certain subset of paddlers represented by powerful, well-funded promoters at the national level who are not interested in compromise but who are apparently insistent upon opening up all of the river all of the time, to inaugurate the wholesale appropriation of the last remaining wild stretches Chattooga as a paddling playground.

In addition, it appears that this opportunistic group may seek the opening of the Chattooga as a precedent for similar efforts to open currently restricted reaches of our few other remaining wild rivers. The efforts of the kayak lobby to gain unlimited, un-regulated access to the Chattooga North Fork, since the issuance of the very reasonable Alternative 4, have engendered in me the new realization that some within this debate may simply never be satisfied with reasonable compromise. They must have it all, and perhaps not just on this river, but on all of the last wild reaches of all the last few wild rivers.

With this new realization comes afresh the new conviction that the Chattooga North Fork does, after all, need to be kept in its current “foot-travel-only” condition, not just for the present time, but for the times to come, so that wilderness lovers have real river wilderness to visit on foot and learn from, so that those in future times are not left with just old tales of what once was.

I would hope that the USFS has the wisdom now to see the wisdom in restricting paddling access to the Chattooga to its current, amply inclusive parameters.

The Chattooga Wild and Scenic River (WSR)

The kayak lobby has claimed that the upper portion of the Chattooga Wild & Scenic River was designated for the primary purpose of paddling. This claim is inaccurate.

“Recreation” is itself only one of the Outstanding and Remarkable Values (ORVs) for which Chattooga was designated, and the kayak lobby is comprised of just one subset of users seeking to “consume” this designation value (albeit a highly visible and rapidly growing subset).

In this context we do well to remember that the upper portion of the river was included within the Wild and Scenic River designation in order to maintain natural flows on the entire Chattooga. A hydroelectric holding-pond was proposed for a site near the confluence of Norton Mill creek; the collected water would have been pumped into an alternative watershed. The urgency of the Chattooga’s WSR designation—specifically the Headwaters—was outlined in the 1971 Study which noted “the non-floatable upper reaches would not stand alone” under the scrutiny of WSR designation^[1]. Appendix C, D and E of the 1971 Study Report devotes fifteen pages to discussing the proposed hydroelectric facilities. Indeed, in 1973, FERC argued that the headwaters section should be removed from WSR consideration in order to generate hydroelectric power!^[2]

However, the upper portion was considered “crucial” to WSR designation in order that the entire river remain in a free-flowing state. The Congressional Report noted...

The Federal Power Commission recommended that the river be given further study because of its substantial hydroelectric power potential and the possibility of developing power in part of the river and preserving the remainder in a free-flowing state. Although we recognize that the river has hydroelectric power potential, in our judgment, preservation of its free-flowing condition and its associated wild and scenic values outweighs the value associated with development of its power potential. A dam or dams, whether located upstream or downstream on the river, would seriously detract from or destroy the natural values of the Chattooga River as a component of the Wild and Scenic Rivers System. [P.L. 93-279 pg 3018]

Therefore, the primary value for the designation of the upper section of the Chattooga was

protect its *free-flowing state* and natural values , not to create a “paddlers playground.”

In addition to non-recreation values, the designation literature indicates that boating was not the primary “Recreational” activity associated with that designation value. When discussing the Chattoahoochee headwaters, the 1971 Study report notes that “*Relaxation is probably the most popular activity*”^[3] and “*fishing is probably the most popular*” activity throughout the entire river corridor. The Congressional Report adds that fishing was “*the number one attraction to the river.*”^[4] The superlatives used to describe fishing and relaxing signify that paddling was not a “primary reason for WSR designation”, nor even the principal activity related to the Outstanding and Remarkable Value (ORV) of *Recreation* .

Hunting, fishing, swimming, camping, hiking, solitude, floating and wildlife-viewing^[5] were each discussed in the congressional Study Report and collectively comprise the designation “value of Recreation.” And because these recreational activities cannot occur simultaneously, in the same location, without affecting the quality of other visitors; this is especially true when paddling is compared to less vigorous activities. Since the quality of the experience defines visitor capacity^[6] , the agency must assess and balance the various statutory considerations “to protect and enhance” the W & S River resource amongst a variety of recreational activities. And agency officials are granted authority to *limit uses* that interfere with others under [16 U.S.C. § 1281(a)].

The Ellicott Rock Wilderness Area

The Ellicott Wilderness was not designated for the sole purpose of public recreation. Public Law 93-632 describes the need for Eastern Wilderness designation as “urgent” in order to protect wilderness areas from “overuse” by outdoor enthusiasts. The designation law described this area as being “*increasingly threatened by pressures of growing and more mobile populations*”, and the need to “*preserve such areas as an enduring resource of wilderness which shall be managed to promote and perpetuate the wilderness character of the land and its specific values of solitude... scientific study, inspiration...*”^[7] The Ellicott Wilderness was not established for unlimited use by extreme-sport enthusiasts as claimed by the kayak access lobby.

The Ellicott Rock Wilderness—through which a section of the Chattooga North Fork flows— was designated, and should be managed, to *protect the wilderness character of the land*. Management should include the *more restrictive values* of solitude and scientific study, over expanding kayaking on the river that already provides 36 miles of unlimited kayak access.

A rational review of the designation literature would conclude that the Chattooga was not designated to benefit only paddling. The agency is required to manage the resource for a variety of uses and balance relative values forest-wide when setting policy;^[6] the 1976, 77 and 85, policies which enhanced boating on the lower thirty-six river miles, and considers the needs of the non-paddlers above Highway 28.

Creek boating is not an ORV associated with the Chattooga’s North Fork

The kayak lobby erroneously claims paddling is an Outstanding and Remarkable Value (ORVs) associated with the Chattooga headwaters. ORVs are identified in the Comprehensive River Management Plan (CRMP), or before 1986 in the Development Plan. These values are not established in the *proposal* or *study report*^[9]. Courts routinely utilize the original CRMP for confirming designation values for each river segment, see most recently [Friends of Yosemite Valley v. Norton, 2003, 348 F.3d 789, 9th id at10].

The final step of WSR designation is the filing of the Development Plan [16 U.S.C. § 1274], and after 1986 the CRMP; both documents were filed as part of the Chattooga designation. The 1977 CRMP prohibited boating above highway 28 and the Development Plan (submitted to congress in 1975) clearly noted that “floating is not recommended” on the upper portion of the Chattooga. Taken together, the statements indicate that paddling – at least in the headwaters- is not a recognized Outstanding Remarkable Value.

Chattooga Designation Literature.			
Page #	Location	Referenced Document	Quote
11847	Chattooga Cliffs & Ellicott Rock Wilderness	Development Plan Fed. Reg. Vol 41, No.56 March 22, 1976 Filed with Congress November 1975	“Both these sections are in a <u>near natural condition</u> . They include some beautiful but hazardous whitewater that <u>should not be floated</u> .”

11848	Bull Pen	Development Plan 1976	"this section is <u>not safe for floating...too hazardous for it.</u> "
11851 11852	Bull Pen	Development Plan 1976	"...the <u>majority of use is fishing.</u> " ... " <u>Floating has been infrequent in the past. Because of the small water flow and the ruggedness of this gorge area, floating is not recommended on this section.</u> "
11852	Burrels Ford	Development Plan 1976	Burrels Ford has been used by floaters very infrequently because of the low water level during normal use season and the difficulty of portaging the gorge areas. <u>Floating is not recommended in this section.</u>
11852	Nicholson Fields	Development Plan 1976	"this location is the source of some of the best trout fishing in both South Carolina and Georgia. <u>Floating will be prohibited above Highway 28 which includes the Nicholson Fields area.</u> "
11849	All the River	Development Plan 1976	"[t]he recent increase in floaters using the river has had a detrimental effect on the fishing experience. Conflicts have developed on certain sections of the river where floaters and fishermen use the same waters." ^[10]
2	Above Highway 28	Comprehensive River Mgt. Plan August, 26 1977	"almost all floating occurs below Highway 28 bridge. Fishermen tend to congregate at Highway 28 Bridge, Burrels Ford and Bull Pen Bridge." (upstream of Hwy 28)
26	Above Highway 28	Comprehensive River Mgt. Plan August, 26 1977	"floating above Highway 28 Bridge will be prohibited and fishing encouraged in this section."
12	Above Highway 28	Comprehensive River Mgt. Plan August, 26 1977	Under Prohibitions in region 8: <i>"entering, going, riding, or floating upon any portion or segment of the Chattooga River..in, on , or upon any floatable object or craft of every kind or description, unless authorized by a</i>

| | | | permit.

The Designation literature clearly does NOT consider kayaking the upper Chattooga a “value”. **Rather, the absence of paddling the North Fork is the value that requires protecting.**

Section 3(d) of the WSR Act makes clear that the administrating agency must develop the plan to best protect the designation values, not convey that responsibility or right to a special interest group, thirty years later after the river achieved protection:

“the Federal agency charged with the administration of each component of the National Wild & Scenic Rivers System shall prepare a comprehensive management plan for such river segment that provide for the protection of the river values. The plan shall address resource protection, development of lands and facilities, user capacities, and other management practices” 16 USC § 1274(d).

The 1977 Comprehensive management plan noted that *“floating above Highway 28 Bridge will be prohibited”*; user capacities (specifically conflict with angling) were cited as justification.

The foregoing “new” information only demonstrates the extent to which the kayak lobby is now trying to rewrite the 1976 and 1977 Plans to best suit their own interests. These 34 year-old plans *provide the baseline* for ORV determinations, and subsequently the baseline for the *protect-and-enhance* mandates. The opportunity to appeal the documented baseline conditions and designation values has long since passed; the kayak lobby’s use of pre-designation dicta as “designation values” is erroneous.

Since the paddlers cannot alter the 34-year-old baseline values, they are erroneously and relentlessly repeating their self-affirmed values in the hope that the USFS capitulates its own mandated authority and management direction. Extreme creek boating in the headwaters is NOT a Chattooga designated value; repetition within the kayak lobby appeal does not make it so.

The Wild & Scenic River Coordinating Council discusses ORVs as follows: *“The Act does not define ORVs. Agency resource professionals develop and interpret criteria in evaluating river values (unique, rare, or exemplary) based on professional judgment on a regional, physiographic, or geographic*

comparative basis.”^[11]
the OR values, [link here](#).

The most recent WSRCC paper (2010) discusses the CRMPs establishment

WSR *proposals* and *study reports* are often co-authored by advocacy or special interests. The WSR Act governing statutes requires that the administering agency consider the congressional and inter-agency comments, BEFORE a river is included into the WSR system. The final step of the Chattooga WSR designation was the Development Plan filed with Congress in November 1975 and published in the Federal register in March of 1976. The WSR Act requires that...

“Before approving or disapproving for inclusion in the national wild and scenic rivers system any river designated as a wild, scenic or recreational river by or pursuant to an act of the State legislature, the Secretary of the Interior shall submit the proposal to the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Federal Power Commission, and the head of any other affected Federal department or agency and shall evaluate and give due weight to any recommendations or comments which the said officials furnish him within ninety days of the date on which it is submitted to them. If he approves the proposed inclusion, he shall publish notice thereof in the Federal Register. WSR Act 4,(c)

Special interest groups therefore do not determine “designation values” (ORVs). The administering agencies should not include every accolade within a WSR *Proposal* into the “designation values”, especially when there are conflicting goals and objectives; ORVs (values) are protected based on the Development Plan. Page 85 of the 1971 Study under ‘Administration’ noted:

On the same page, the study again deferred how recreation would be managed and values protected to the 1971 Development Plan.

The public must have the opportunity to review OR values, and if necessary appeal a development plan or management policy; the Study Reports was outside the scope of the public NEPA process and therefore exclusion of the 71 study to determine values would be arbitrary and capricious. The 1976 development plan and the 1977 CRMP both discuss designation values associated with the upper river; both zoned boats away from the Chattooga headwaters thirty-four years ago.

The courts and governing statutes are clear that the Outstanding and Remarkable Values that require *protection and enhancement* are established by the Development Plan (and after 1986, by the CRMP^[12]). For the upper portion of the Chattooga, that clearly includes restricting floating.

A **comprehensive review** of the 1970 proposal and 1971 study would have also determined that the headwaters were not ideal for floating. Page 26 of the 1970 proposal wrote: “*The waters of the Chattooga are ideal for floating in canoes and rubber rafts, especially in the lower reaches.*” (*emphasis added*). The 1971 Study report described the reach *hazardous* that could only be floated in a “rubber raft” with *difficult and frequent portages*. Oddly, rubber rafts—the only craft mentioned in the 1971 report in conjunction with the headwaters—remains restricted, while hard-creek boating—a new activity/craft never discussed in the 71 report—is being (mis)represented as a protected ORV by the kayak lobby appellants.

[1] Pg 61-64 1971 Chattooga WSR Study report, dept. of agriculture.

[2] Pg 181-3, 1971 Chattooga WSR Study report, dept. of agriculture.

[3] pg 71, 1971 Chattooga WSR Study report, dept. of agriculture.

[4] p 3010, P.L. 93-278, 1973 Senate report for Chattooga WSR designation

[5] Pg 3010 , P.L. 93 -278, 1973 Senate report for Chattooga WSR designation

[6] The “quality of the visitor experience” defines the “capacity” of a Wild and Scenic River. 47 Fed Reg 39458-39459 (Sept 7, 1982) *Final Guidelines for Managing Wild and Scenic Rivers* .

[7] Pg 2096, Jan 1975, PL 93-622 Declaration of Ellicott Wilderness.

[8] 16 U.S.C. 1604(e)(1)

[9] Pg 42 *Wild and Scenic River Management Responsibilities* (2002), Appendix A, The report indicates that CRMPs establish “baseline ORVs” for future management plans. The appellants use of the 1970 proposal and 1971 study are not relevant in a retroactive review of the ORVs published with the Development Plan and 1977 CRMP.

[10] The 1976 Development Plan suggests boating was restricted from above highway 28 for three reasons; a) to protect angling because of insufficient flows, and c) for visitor safety. The appellants argue the 1976 limitations were established for just safety reasons.

[11] Q&A 1998 WSR coordinating council

[\[12\]](#) The 1968 Wild and Scenic River Act [*Public Law 90-542, 82 Stat. 906*]requires a Development Plan be filed with congress within one year 4(d). Revisions to the public law now require a CRMP within three years of congressional approval.

Thank you for considering my comments.

Sincerely,

Butch Clay

125 Apple Orchard Road

Mountain Rest, SC 29664



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